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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

ADP

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITE HERE LOCAL 2,

Plaintiff,

v.

SFO GOOD-NITE INN, LLC, a California
corporation; ERIC YOKEN, an individual; and
BANG JA KIM, an individual,

Defendants.

Case No.

007-02588-BZ

COMPLAINT FOR BREACH OF
CONTRACT, DELINQUENT
FRINGE BENEFIT CONTRIBUTIONS
(LMRA §301)

I.

JURISDICTION AND VENUE

1. This is an action brought by Plaintiff union for declaratory and injunctive relief, for an accounting, and to collect unpaid union dues and delinquent fringe benefit contributions owed pursuant to the terms of a collective bargaining agreement and employee benefit plan trust agreements. Specifically, the complaint seeks to collect unpaid dues and trust fund contributions.

COMPLAINT

PAGE 1

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GO 44 SEC. N
NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SEITZ

3. Venue is proper in this Court pursuant to 29 U.S.C. §185 because the collective bargaining agreement is administered in this district, the breaches occurred here, and the Defendant employer resides here.

PARTIES

5. Defendant GOOD-NITE INN, a California Limited Liability Company, is an employer within the meaning of 29 U.S.C. §152(2) and 29 U.S.C. §1345. Defendant is a hotel near the San Francisco International Airport in South San Francisco and is, and at all material times herein has been, obligated to deduct and pay union check-off dues to Local 2 and to make employer contributions to the San Mateo Hotel Employees and Restaurant Employees Welfare Fund (“Welfare Plan”) and the San Mateo Hotel Employees and Restaurant Employees Pension Fund (“Pension Plan”) (collectively, “Trust Funds”) pursuant to a collective bargaining agreement between Defendants and/or Local 2’s predecessor, HERE Local 340 and/or Local 2. Defendant GOOD-NITE INN’s address is 245 S. Airport Blvd., S. San Francisco, CA 94080.

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2 6. Defendants ERIC YOKEN¹ ("Yoken") and BANG JA KIM ("Kim") are the
3 principal owners and/or operators and/or managing partners of Defendant GOOD-NITE INN.
4 On information and belief, at all times relevant herein, they have held a strong and controlling
5 interest in the operations of the hotel in the time period covered by this lawsuit. The collective
6 bargaining agreement in effect between Local 2 and GOOD-NITE INN imposes personal
7 liability on the individual owners for failure to pay contributions in accordance with the trust
8 agreement for the Welfare Plan.

9
10 7. On information and belief, Defendants GOOD-NITE INN, YOKEN¹ and KIM,
11 were at all times mentioned herein joint employers, alter egos or a single employer within the
12 meaning of the LMRA.

13 III.

14 FACTS

15
16 8. Wyndham International, d/b/a Ramada Inn North ("Wyndham") and the Union¹
17 or its predecessor, Local 340, were signatories to a collective bargaining agreement covering
18 the hotel's housekeeping and maintenance employees that was effective from December 5,
19 1999 through November 30, 2003. Wyndham and the Union or its predecessor, Local 340,
20 agreed to a one-year extension of the collective bargaining agreement through November 30,
21 2004. In March 2004, Defendant GOOD-NITE INN purchased Wyndham and assumed the
22 collective bargaining agreement ("Agreement").

23
24 9. In August 2004, the Union and Employer began negotiations for a new contract.
25
26

27 ¹At the time this collective bargaining agreement was executed, the signatory union
28 was Hotel Employees and Restaurant Employees Union, Local 340, which merged with
UNITE HERE! Local 2.

1
2 When bargaining had not been completed by the end of the Agreement, the contract was
3 extended during negotiations for a successor agreement by virtue of both a clause in the
4 underlying Agreement and an agreement of the parties. However, on September 14, 2005,
5 while the Agreement was still in effect, Defendant GOOD-NITE INN withdrew recognition
6 of the Union, asserting that a majority of its' employees no longer desired exclusive
7 representation by Local 2.
8

9 10. On October 14, 2005, the Union filed unfair labor practice charges against the
10 Defendant with the National Labor Relations Board ("NLRB"), which issued a complaint
11 against Defendants. On September 28, 2006, on NLRB Administrative Law Judge (the
12 "ALJ"), Jay Pollack, found that as a matter of law, Defendant's withdrawal of recognition
13 during the life of a contract was a violation of the National Labor Relations Act, as amended.
14 The ALJ also found that the employee petitions based upon which Defendant withdrew
15 recognition were tainted by its unfair labor practices.
16

17 11. At all times material herein, Defendants were contractually bound under the
18 Agreement and trust agreements incorporated therein, to contribute to the Trust Funds on
19 behalf of all eligible GOOD-NITE INN employees in accordance with the trust agreements,
20 the Welfare Plan, the Pension Plan and the rules and regulations adopted by the trustees.
21 Pursuant to written trust agreements executed by the San Mateo County Restaurant - Hotel
22 Owners Association and the Union, the Trust Funds were established for the sole and
23 exclusive purpose of providing health and related benefits and pension benefits to employees
24 (and their beneficiaries) covered by contracts between Local 2 and employers in the industry
25 who are signatory to the collective bargaining agreements.
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2 12. Specifically, the Agreement at Sections 39 and 40, *Health and Welfare Fund*
3 *and Pension Fund*, respectively, obligate Defendant GOOD-NITE INN to contribute to and
4 participate in the Trust Funds. Defendants have failed to fulfill this obligation since
5 September 2005 to the present.

6
7 13. The Agreement provides further that Defendants YOKENⁿⁱ and KIM are
8 personally liable for such contributions to the Welfare Plan, including liquidated damages
9 and interest.

10 14. At all times material herein, Defendant GOOD-NITE INN was contractually
11 bound under the Agreement, and trust agreements incorporated therein, to report monthly to
12 the Trust Funds all employment information necessary for the Trust Funds to determine
13 which employees were entitled to health, welfare and related benefits, pension benefits and
14 how much money Defendants were obligated to contribute to Trust Funds to provide for
15 these benefits. Defendants have failed to fulfill this obligation since September 2005 to the
16 present.

17
18 15. At all times material herein, Defendant GOOD-NITE INN was contractually
19 bound under the Agreement to make payments under the Union security agreement
20 provisions. Specifically, the Agreement at Section 33 *Dues Check-off* obligates Defendant
21 GOOD-NITE INN to deduct from its employees' paychecks the union-designated amount
22 fees and dues on a monthly basis. Defendants have failed to fulfill this obligation since
23 September 2005 to the present.

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25 16. Defendant GOOD-NITE INN owes \$194,940.89 in Trust Fund contributions
26 for the period between September 2005 to the present. This \$194,940.89 total is broken
27
28

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2 down as follows: \$179,256.00 in principal and liquidated damages; \$15,684.89 in interest
3 accrued as of May 1, 2007. (See table at Paragraph 19.) Defendants YOKEN^{SC} and KIM are
4 both personally liable for \$158,097.06, which amount reflects Defendants' Welfare Fund
5 contribution obligations.
6

7 17. Defendant GOOD-NITE INN owes Plaintiff Union \$16,096.37 for the
8 period between September 2005 to the present for non-payment of union dues under the
9 Union Security provisions in the Agreement. This \$16,096.37 is broken down as follows:
10 \$14,744.00 for unpaid dues; \$1,352.37 in interest.
11

12 18. Because Defendants have failed to supply the Union and the Trust Funds
13 information as required by the Agreement and trust agreements incorporated therein, the
14 amounts in Paragraphs 16 and 17 necessarily are estimates. Plaintiff believes and alleges that
15 the principal monthly amounts owed to the Union and Trust Funds for the period after
16 September 2005 are no less than those amounts that would have been owed for work
17 performed in the most recent month in which Local 2 members worked for Defendants.
18 Therefore, the delinquency estimate for this period set forth in Paragraph 16 is based on the
19 current number of Defendants' employees and the contribution rates for the Welfare Fund
20 and Pension Fund. The delinquency for the period set forth in Paragraph 17 above is also
21 estimated based on the current number of Defendants' employees and the current union dues
22 rate (20 employees; \$36.46 per employee per month from 9/05 to 12/06; \$38.46 per
23 employee per month from 1/07 to 5/07).
24
25

26 19. Accordingly, as of today's date, May 15, 2007, Defendants are obligated to
27 the Union and Trust Funds for the following amounts.
28

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<u>Trust Fund Contributions</u>	<u>Union Dues</u>
\$194,940.89 owed by Defendant Good-Nite Inn	\$16,096.37
\$158,097.06 owed by Defendants Eric Yoken ^{5,6} and Bang Ja Kim	
TOTAL = \$211,037.26	

20. In addition, Defendants are liable for Plaintiff's attorneys' fees, to be determined at the conclusion of this litigation.

FIRST CLAIM

21. The First Claim is an action to enforce a collective bargaining agreement. Jurisdiction arises under 29 U.S.C. §185(a).

22. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20 hereinabove as if set out in full.

23. Plaintiff is a party to the Agreement described in Paragraph 8, hereinabove; and, the Agreement, which incorporates trust agreements to the Welfare and Pension Funds, requires Defendants to make certain contributions to the Trust Funds.

24. Defendants have failed and refused to make the contributions as required under the Agreement. Trust Funds are entitled to the principal owed, prejudgment interest, attorneys fees, and collection costs as required by the trust agreements, which are incorporated into the Agreement.

SECOND CLAIM

25. The Second Claim is also a claim under 29 U.S.C. §185(a).

26. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20 hereinabove as if set out in full.

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2 27. Plaintiff is a party to the Agreement described in Paragraph 8 hereinabove;
3 and, the Agreement requires Defendants to make certain deductions from GOOD-NITE INN
4 employees' paychecks the union-designated amount of initiation/reinstatement fees and dues
5 for the classification of work in the pay period preceding the fifth (5th) day of the month and
6 remit the same to the Union no later than the twentieth (20th) day of the same month.
7

8 28. Defendants have failed and refused to make said deduction and payment of
9 union dues as required under the Agreement. The Union is entitled to the principal owed,
10 prejudgment interest, attorneys fees, and collection costs.
11

12 THIRD CLAIM

13 29. The Third Claim is an action to bring an accounting under the terms of
14 Agreement, and the trust documents and trust agreements therein incorporated. Jurisdiction
15 arises under 29 U.S.C. §185(a).
16

17 30. Plaintiff realleges and incorporates by reference Paragraphs 1 through 20
18 hereinabove as if set out in full.
19

20 31. The Agreement, which incorporates the trust agreements, as amended, provide
21 that the Trust Funds may require an individual employer to submit to an audit and must
22 supply the Trust Fund with any information report or documentation reasonably relevant to
23 and necessary for the administration of the Trust Funds -- particularly including the
24 determination of employee eligibility for benefits under the Trust Funds and the employer's
25 financial obligation to the Trust Funds for the coverage of eligible employees.

26 32. By virtue of Defendants' failure to provide to the Trust Funds with the
27 information necessary to determine employees' eligibility for health and welfare benefits and
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2 pension benefits under the Agreement, and Defendants' financial obligations to the Trust
3 Funds for the provision of these employee benefits, the precise amount of Defendants'
4 liability to the Trust Funds since September 2005 is not presently known. It is necessary for
5 the Trust Funds to examine all of the necessary and appropriate payroll books and records of
6 Defendants, covering all of Defendants' employees for the period since September 2005 until
7 the date of judgment.
8

9 33. In order to determine the exact amount due from Defendants, the Union
10 requests that this court issue its order compelling Defendants to abide by the Agreement, and
11 to submit to Trust Funds' representatives and auditors all of its payroll books and records for
12 the purposes of inspecting same to determine the amount of contributions due the Trust
13 Funds since September 2005 under aforesaid collective bargaining agreement, and further,
14 that Defendants be required to pay the cost of such audit pursuant to the terms of aforesaid
15 collective bargaining agreement.
16

17 WHEREFORE, PLAINTIFFS PRAY FOR JUDGMENT AGAINST SFO GOOD-
18 NITE INN, ERIC YOKEN^{JK} and BANG JA KIM, JOINTLY AND SEVERALLY AS
19 FOLLOWS:
20

21 1. That this Court adjudge and declare that Defendants, their successors, agents
22 and all persons acting in concert with them, as required under the terms of the collective
23 bargaining agreements and trust agreements incorporated therein to comply with the
24 mandatory reporting and contribution requirements;
25

26 2. That this Court adjudge and declare that Defendants, their successors, agents
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2 and all persons acting in concert with them, as required under the terms of the collective
3 bargaining agreement to comply with union check-off and dues paying requirements;

4 3. That Defendants be ordered to submit to an audit and for that purpose to
5 furnish to Trust Funds' representatives and auditors all of its payroll books and records for
6 the since September 14, 2005 until the date of judgment, which records shall show the active
7 employee payroll and all hours worked by all employees of Defendants for each day, week
8 and month included in said period, and that a referee be appointed to perform such audit and
9 be further empowered to examine the parties to this action as well as other witnesses, and
10 that a report of the audit of such accounting be presented to the Plaintiff and the court
11 pursuant to an interlocutory order herein;
12

13
14 4. For judgment in the amount of unpaid contributions, liquidated damages and
15 interest;

16 5. For judgment in the amount of unpaid union dues and interest;

17 6. For attorneys' fees and costs; and

18 7. For a preliminary and permanent injunction ordering Defendant GOOD-NITE
19 INN to pay Trust Funds the entire contribution deficiency, \$194,940.89, plus attorneys' fees
20 forthwith, and henceforward to make timely contributions in full to Trust Funds according to
21 the rules of the Trust Funds and the governing trust agreements.
22

23 8. For a preliminary and permanent injunction ordering Defendants ERIC
24 YOKENO⁵² and BANG JA KIM to pay Welfare Fund contributions in the amount of
25 \$158,097.06, plus attorneys' fees forthwith, and henceforward to make timely contributions
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2 in full to Trust Funds according to the rules of the Trust Funds and the governing trust
3 agreements.

4 9. For a preliminary and permanent injunction ordering Defendant GOOD-NITE
5 INN to pay Plaintiff Union the entire union dues deficiency, \$16,096.37, plus attorneys' fees
6 forthwith, and henceforward to make timely payments in full to Union pursuant to the
7 Agreement.
8

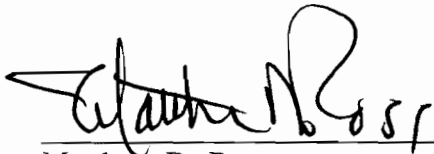
9 10. For other such relief the Court deems just and proper.

10 Respectfully submitted,

11 DATED: May 15, 2007

12 LEONARD CARDER, LLP

13
14 By:



15 Matthew D. Ross

16 Attorneys for Plaintiff UNITE HERE Local 2
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